OOI POH SUAN & ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN J
[SELANGOR CRIMINAL APPEAL NO. 45 OF 1983]
13 SEPTEMBER 1983

CRIMINAL LAW AND PROCEDURE: *Offence under s. 52 (3) Societies Act - Attending a secret society meeting - Plea of guilty - Appeal against conviction - Whether appropriate - Whether accused understood the nature and consequences of plea - Whether accused misled by charge - Joint trial - Appeal against sentence - Societies Act 1966, s. 52(3) - Criminal Procedure Code, ss. 170, 294, 305, 323, 325 - Courts of Judicature Act 1964, s. 35.*

The accused were charged with attending a meeting of a triad society. The accused pleaded guilty and were sentenced for terms of between two and two and a half years from date of arrest. Some appealed against the conviction despite pleading guilty and others against the sentence. Counsel for accused argued that:-

(1) the accused were not asked whether they objected to a joint trial.

(2) the charge was only put to the accused in Mandarin when some of them spoke only Cantonese.

Held:

[1] It is clear under s. 305 of the Criminal Procedure Code that appeals can only be against the extent or legality of the sentence.

[2] However, in a proper case depending on the facts of the case the appellate Court has power of revision under s. 323 of the Criminal Procedure Code and s. 35 of the Courts of Judicature Act 1964, if it is desirable in the interest of justice.

[3] The appellants were not misled or in any way prejudiced by the charge which had been explained to them.

[4] There is no requirement in s. 170 of the Criminal Procedure Code that the Magistrate must ask the accused whether they agreed to a joint trial. It is a discretion to be exercised judicially.

[5] In sentencing the Magistrate was wrong in principle for taking into consideration:-

(i) the gravity of the offence and
(ii) deterrence.

There was no evidence that the appellants were secret society members. They had only attended the meeting. Further the Magistrate had failed to consider the respective pleas in mitigation.

[Sentences reduced.]

Case referred to:
Lee Yu Fah v. PP [1937] MLJ 179

Legislation referred to:
Courts of Judicature Act 1964, s. 35
Criminal Procedure Code, ss. 170, 294, 305, 323, 325
Societies Act 1966, s. 52(3).

JUDGMENT

Mohamed Dzaiddin J:

This is an appeal against conviction and sentence after the appellants have pleaded guilty to the charge under the Societies Act 1966. The charge reads as follows:

> That you between the hours of 9.30 p.m. 4 April 1983 and 12.30 a.m. 5 April 1983 at Pengkalan Manggis, Sg. Pelek, in the district of Sepang in the State of Selangor, did attend a meeting of triad society, to wit, the ANG BIN HOAY,and that you have thereby committed an offence punishable under s. 52(3) of the Societies Act No.13/66.

The learned Magistrate convicted and sentenced the appellants to imprisonment for a term between two and two and a half years from the date of arrest, the latter period being meant for those having a record of previous convictions.

Miss Chua Ming Hung, the learned Deputy Public Prosecutor, raised a preliminary objection in respect of appellant Nos. 1, 2, 3, 4, 5, 7, 8, 9 and 10 who appealed against conviction despite pleading guilty and were accordingly convicted. It is clear under s. 305 of the Criminal Procedure Code that these appellants can only appeal against the extent or legality of the sentence. However, in a proper case depending on the facts of such case, the appellate Court has power of revision under s. 323 of the Criminal Procedure Code. This section quite clearly says that a Judge can examine the record for the purpose of satisfying himself as to the correctness, legality or propriety of any finding made by the lower Court. This power is also bestowed by s. 35 of the Courts of Judicature Act 1964 if it appears "desirable in the interestof justice" to do so. See also: *Lee Yu Fah v. PP* [1937] MLJ 179.

It was submitted on behalf of the nine appellants that they were misled into pleading guilty. The facts of the case of which they have admitted did not constitute an offence. The facts admitted were not individually pleaded. The charge was not properly explained and read in respective Chinese dialects as the dialect used was Mandarin when some of them knew only Cantonese. It was further submitted that most of the appellants, who were not represented by Counsel, were not asked whether they objected to a joint trial before the application for joint trial was granted by the learned Magistrate.

I have looked at the record of the proceedings and my conclusion was that the learned Magistrate had conducted the hearing admirably well considering the fact that he had to use a town hall as a courthouse to deal with 77 persons. The record stated that the charge was read individually, it was read over, explained and understood and, after which, they all pleaded guilty. It was also on record that the accused understood the nature and consequences of their plea. Here again, I am satisfied the appellants had understood the charge. The charge was simply for attending a triad society meeting and it followed closely the wordings of the section. There is therefore no merit in the argument that the facts do not constitute the offence. The appellants were not misled or in any way prejudiced by the charge. As for the joint trial, there is no requirement in s. 170 of the Criminal Procedure Code that the Magistrate must ask the appellants whether they agreed to a joint trial. It was a discretion which the learned Magistrate had exercised judicially. All in all, I am satisfied that the plea of guilty and conviction was properly recorded. I allowed the objection of the learned Deputy Public Prosecutor by dismissing the appeal against conviction.

Now, as for the appeal against sentence, I am mindful of the well-known principle of law that the appellate Court will not normally alter a sentence imposed by the lower Court unless it is satisfied that the sentence imposed was excessive or inadequate to such an extent that the lower Court must have failed to apply its mind to the right principles in assessing sentence.

Here, I am satisfied that the learned trial Magistrate was wrong in principle. In his grounds of judgment, the learned Magistrate gave two reasons for imposing the sentences of two years to two and a half years respectively - (1) the gravity of the offence; and (2) deterrence. He also stated that he called for and applied his mind to the mitigating plea of each appellant and concluded that having weighed the mitigating factors, they could not override the seriousness of the offence committed. On the gravity of the offence - which in fact is only for attending a secret society meeting - he stated that he took a serious view because members of secret societies were, what he termed as, "snakes and scorpions" in our society. There was no evidence that the appellants were secret society members. Clearly, the learned Magistrate was barking up the wrong tree, so to speak when he linked the offence of attending a secret society meeting to that of being members of the secret society. With respect, I think he was very much influenced by the submission of the learned DPP who stated in his submission that "secret societies strike terror in the hearts of many".

On the question of deterrence, I find that he has failed to consider the respective pleas in mitigation, which, had he done so, he would have come to a different finding than that imposed.

Although he qualified himself by saying that he called for and applied his mind to the mitigating pleas of the appellants, looking at the record as a whole, I am satisfied that he did not give adequate attention to the mitigating factors. No reason was given except the erroneous conclusion that these mitigating factors could not override the seriousness of the offence. In the circumstances of this case, and having considered the submission of Counsel, in my judgment, the sentence imposed by the learned Magistrate is excessive. This appeal is therefore allowed and I alter the finding of the learned Magistrate by reducing the sentences of two years and two and a half years respectively to be as follows:-

(a) As for appellant Nos. 1, 4, 5, 7, 8, 9, 14, 17, 18, 26, 32, 34, 37, 40, 49, 52, 53, 54, 56 and 60, who were below the age of 21 years at the time of the commission of the offence, their sentence of imprisonment is set aside and each of them will be put on bond under s. 294 of the CPC. for three years in the sum of RM1,000 in one surety.

(b) The sentence against the other appellants is reduced. In my opinion, public interest is best served, indeed in this case has been served, by the appellants remaining in prison from the date of arrest to the date of the conclusion of this appeal. Therefore, with the exception of appellant Nos. 6, 10, 58 and 61, the sentence is reduced to six months' imprisonment from the date of arrest; and in the case of appellant No. 62, from 14 April 1983. Appellant No.19 will serve his six months from 12 September 1983. For the remaining four appellants, the sentence is reduced to eight months' imprisonment from the date of arrest because of their previous conviction

I am also exercising my power of revision under s. 325 of the Criminal Procedure Code in respect of one Tan Ann who is now serving a sentence for the same offence, as his application for extension of time to file the Petition of Appeal was refused by me. I alter his sentence of two years' imprisonment to that of six months' imprisonment from the date of arrest.

Lest I should be accused of standardising the punishment for the offence under s. 52(3) of the Societies Act, I wish to make it clear that I have considered the facts of mitigation of each appellant which, in my opinion, are not materially different from one than the other. After all, the offence is only for attending a secret society meeting.

Also found at [1984] 1 CLJ 113